IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS. 122 AND 123 OF 2006
IN
CRIMINAL APPEAL NOS. 7 AND 8 OF 2006

CRIMINAL MISCELLANEOUS APPLICATION NO.122 OF 2006

Ramanand Pandey,
Presently in Custody
at Central Jail Aguada. ... Applicant

versus

State, through the
Public Prosecutor. ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO.123 OF 2006

Rajesh Chaubey,
Presently in Custody
at Central Jail Aguada. ... Applicant

versus

State, through the
Public Prosecutor. ... Respondent

Mr. S. G. Bhobe, Advocate for the Applicants in both the applications.

Mr. S. N. Sardessai, Public Prosecutor for the Respondents in both the applications.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 5TH APRIL, 2006.

ORDER(Per N. A. Britto, J.)

The applicants herein are the accused who have been convicted and sentenced under Section 302 r/w Section 34 I.P.C. to suffer life imprisonment for causing the death of Raj Kumar Soni and also to fine, and, by the present applications the applicants(accused, for short) seek suspension of the sentence and their release on bail pending the hearing and final disposal of the appeal filed by them.

2. A-1/Ramanand Pandey was under detention during the trial of the said case. A-2/Rajesh Chaubey was ordered to be released on bail by Order of this Court dated 13-8-2004 while the bail application filed by A-1/Ramanand Pandey was rejected by the same Order.

3. The allegation against both the accused was that on 17-3-2004 at about 18.30 hours both of them in furtherance of common intention had stabbed the deceased Raj Kumar Soni

with a knife at his back thereby causing his instantaneous death. The incident took place in the premises of Vidhya Marketing Agency which is an establishment owned by A-1/Ramanand Pandey and A-2/Rajesh Chaubey is his brother-in-law and salesman while the deceased was his ex-salesman. The said establishment is situated in Anand Bhavan Building. Although there were some eye witnesses to the incident, they turned hostile and in the course of the trial the case of the prosecution was proved by circumstantial evidence only. Soon after the incident both the accused came down to the establishment of PW18/Mohammad Bawa situated on the ground floor and A-1/Ramanand Pandey told him that some persons came to attack him and PW18/Bawa saw some bleeding injuries on the hands of A-2/Rajesh Chaubey. He also saw A-1/Ramanand Pandey was nervous and there were some blood stains on his shirt and he made a phone call to the Police and then PW1/PSI Rajendra Prabhudessai reached the scene, but before that A-2/Rajesh Chaubey went to PW16/Dr. Edwin Araujo where he was found by the latter with a clean cut wound over the distal interphalangeal joint of the right index finger and rupture of the extensor tendom and contused lacerated wound in the web space

of the thumb and was admitted and discharged on the next day. Meanwhile PW1/PSI Prabhudessai was informed by A-1/Ramanand Pandey, who was in a yellow shirt with blood stains that he had requested the staff of the said Shahi Darbar, owned by PW18/Mohammad Bawa to inform about the incident to the Police and he further informed him that the deceased who was his ex-employee had come to his Office in the evening asking for money and had heated arguments with him and his brother-in-law the said Chaubey and they had a scuffle with the deceased Raj Kumar Soni and during the said scuffle the said A-2/Rajesh Chaubey was injured and the said Raj Kumar Soni was lying in the Office and thereafter PW1/PSI Prabhudessai along with A-1/Ramanand Pandey went to the second floor where the said Vidhya Marketing Agency is situated and while going up he saw blood stains on the staircase as well as in the passage and thereafter A-1/Ramanand Pandey opened the door of the said Office and he saw a male person was lying on the floor full of blood, and, on checking his pulse it was found that he was dead. There were blood stains on the walls as well as on the table. The body of Raj Kumar Soni had a stab injury on the left side and blood was oozing out from it. It was later certified

by PW13/Dr. S. Banaulikar to be a stab wound of 3 1/2 x 1/2 cms. which had penetrated into the left pleural cavity cutting the left lower lobe and the same was situated on the left side in the eighth inter coastal space. PW1/PSI Prabhudessai also noticed a knife with black handle and blood stains lying on the table top, which was subsequently taken by the finger print expert after the scene of offence panchanama was done and photographs taken.

4. The learned Additional Sessions Judge found several circumstances proved, as far as A-1/Ramanand Pandey was concerned, that he was found as deposed to by PW1/PSI Prabhudessai and PW18/Mohammad Bawa near the establishment of the latter. The learned Additional Sessions Judge also found that there were blood stains on the yellow colour shirt A-1/Ramanand Pandey was wearing which showed that they were of human blood. The learned Additional Sessions Judge also found that Vidhya Marketing Agency admittedly belonged to A-1/Ramanand Pandey and that the deceased was previously working for A-1/Ramanand Pandey and this was sufficiently established. As far as A-2/Rajesh Chaubey is concerned, the learned Additional Sessions Judge found that his

presence was noticed by PW18/Mohammad Bawa along with A-1/Ramanand Pandey and he had a bleeding injury on his hand and although A-2/Rajesh Chaubey tried to explain the said injury in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 as having been caused due to the glass of window, PW16/Dr. Edwin Araujo has opined that the said two injuries on the palm of A-2/Rajesh were possible to be caused in one blow if the index finger was bending down and the knife was rotated. No opinion was elicited from him whether the said injury could be caused by a glass and, therefore, the learned Additional Sessions Judge has concluded that A-2/Rajesh Chaubey was very much present along with A-1/Ramanand Pandey in the Office of the said Vidhya Marketing Agency and the said explanation given by A-2/Ramanand Pandey, has not been accepted by the learned Additional Sessions Judge, inter alia, observing that no broken glass was found at the scene of offence. The learned Additional Sessions Judge has also noted that the blood group of A-2/Rajesh Chaubey is O Rh positive and such blood was found also on the clothes of the deceased.

5. The principles underlying the grant of bail either at

the pre-trial or post conviction stage essentially remain the same namely, the gravity of the offence, the severity of the punishment as well as the nature of the evidence which has been collected or produced by the prosecution as noted by this Court in its Order dated 13-8-2004 and reiterated by the Apex Court from time to time.

6. The Apex Court in the case of **Kishori Lal** v. **Rupa and others** (AIR 2005 SC 1481) has stated that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. The Supreme Court has also noted that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. The Apex Court further stated that the mere fact that during the period when the accused were on bail during the trial, there was

no misuse of liberty by them, does not per se warrant suspension of execution of sentence and grant of bail. A-1/Ramanand Pandey has chosen to remain silent. No doubt an accused is certainly entitled to maintain silent but certainly not when he has a duty to speak and specially when the facts as how the deceased, his ex-salesman came to die with stab injury on his back in his Office and in his presence and he was found with blood stains on his shirt which disclosed to be of human blood. In the absence of any explanation coming from A-1/Ramanand Pandey as to how the deceased, his ex-employee came to be found dead with a stab injury in his Office with a knife lying on his table, it must be stated that the said circumstance speaks eloquently regarding his complicity in the murder of the deceased and the case against A-1/Ramanand Pandey appears to be as serious as it was, when his bail application was earlier rejected by this Court by Order dated 13-8-2004 inspite of the eye witnesses having later on turned hostile. As far as A-2/Rajesh Chaubey is concerned, he was a salesman and brother-in-law of A-1/Ramanand Pandey and was found with the said injuries on his palm and although the explanation given by him as regards the cause of injury cannot be prima facie

accepted, there is no other strong circumstance linking him with the said murder of the said Raj Kumar Soni and in a situation like this A-2/Rajesh Chaubey could be admitted to bail not only because he was on bail during the trial but also by considering the nature of circumstantial evidence proved against him. Consequently, we reject the application of A-1/Ramanand Pandey and grant that of A-2/Rajesh Chaubey. The execution of sentence imposed upon A-2/Rajesh Chaubey shall be suspended upon execution of a bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Margao on same terms and conditions as contained in the Order of this Court dated 13-8-2004.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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